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To:

Cc:

Subject: FW: Injured Spouse Claims Under Community Property Outline

Attached below is an outline in regard to the above topic. As I mentioned, the concept of an "injured spouse" on a nuts and bolts level relates to an offset under Code section 6402(c) or (d).

Attachment 1:

Injured Spouse Claims Under Community Property Laws

1. What is an Injured Spouse?
 1. Elements:
 - a. Joint return
 - b. Overpayment
 - c. Liable spouse
 - d. Injured spouse files form 8379 – Injured Spouse Allocation
2. Other Points
 1. Not “innocent spouse”
 2. Equitable facts not required
 3. Injured spouse’s interest in an overpayment

4. Injured spouse's interest in a joint overpayment will not be offset if the above elements are met
3. Determining the Injured Spouse's Interest in the Overpayment
 1. IRS determines the injured spouse's interest in the overpayment.
 2. Steps to determine the injured spouse's interest in the overpayment

| | | | | |
|---|---|---|---|--|
| Injured Spouse's Separate Tax Liability | X | Joint Tax Liability Shown on Return | = | Injured Spouse's Share of Joint Tax Liability |
| <u>Total of Spouses' Separate Tax Liabilities</u> | | | | |

4. Offset
5. Community Property Laws and Injured Spouse Claims
 1. State law governs the injured spouse's interest; federal law dictates the tax consequences.
 2. Allocate items based on community property laws.
 3. Injured Spouse's contribution towards the liability based on community property laws.
6. Necessary Steps to Determine Injured Spouse's Share in CP Jurisdictions
 1. Identify the underlying source of the overpayment.
 2. Characterize the underlying source of the overpayment as separate or community property.
 3. Offset the liable spouse's share of overpayment from a community property source against the liable spouse's separate liability.
 - a. Allocate items
 - b. If the debt to which the offset was applied is not a federal tax debt, refund the injured spouse their share of the overpayment. If a federal tax debt, then move to next step.
 4. Consult state law to determine if creditors may reach community property to satisfy a spouse's separate debts.

5. Consult state law to determine if creditors may reach any portion of an overpayment from a separate property source of the liable spouse or non-liable spouse.

7. Other Points

1. There is a presumption that items acquired after marriage are community property.
2. Marital agreement may change character of property normally considered community property.
3. Certain items must be separately allocated by operation of federal law (community property laws disregarded).